

(REDACTED)

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EXHIBIT 5

STEVEN MICHAEL RAFFERTY - 30(B)(6) - 30(B)(1)
MAY 09, 2024

JOB NO. 930595

13 (CONFIDENTIAL & HIGHLY CONFIDENTIAL PORTIONS REDACTED)

14 WEBCONFERENCE VIDEOTAPED DEPOSITION OF
15 STEVEN MICHAEL RAFFERTY
16 Pursuant to 30(b) (6) -- PAGES 6 to 199
17 Pursuant to 30(b) (1) -- PAGES 200 to 205
18 Pages 1 through 210

19 | Thursday, May 09, 2024

20 8:44 a.m. to 3:59 p.m. Central Time

21 LOCATION: Via Zoom Webconference

24 Stenographically reported via Zoom by:
Linda R. Wolfe, RMR, FCRR, FPR-C

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1 sort of keep track of their customers and interactions
2 with them; is that fair?

3 A. CRM?

4 Q. Yeah.

5 A. Yes. But to clarify, LeadConduit is not a
6 CRM.

7 Q. Right. When was the product called
8 TrustedForm first developed?

9 A. That was in 2010.

10 Q. Okay. Can you tell us, generally, how that
11 came about?

12 A. That came about because we had customers that
13 were complaining about fraud, and, specifically --
14 specifically fraud by lead vendors.

15 So we were helping clients that were buying
16 leads from these lead vendors, and a lot of the clients
17 would say, you know, "I call these consumers and they
18 said that they never filled out the form. They said
19 they didn't want to hear from me. So that's not
20 acceptable. We want to only contact consumers that want
21 to hear from us."

22 And so we wanted to -- what we realized is
23 that oftentimes lead vendors were misrepresenting where
24 and how they generated leads. So we wanted to come up
25 with a solution to help protect the lead buyers so that

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1 they knew that they were getting authentic leads, people
2 that were interested for their services. So we came up
3 with a solution of TrustedForm to verify when and where
4 leads originated.

5 Q. Well, we'll get into the details. But for
6 now, can you describe at a general level how does
7 TrustedForm work that it addresses this problem that
8 you've described?

9 A. Sure. What TrustedForm does is it's a
10 JavaScript snippet. It's a line of code that the lead
11 provider or whoever hosts the form adds to their
12 webform. And that code issues a certificate that is
13 passed along with the lead.

14 And that certificate tells the buyer of the
15 lead information about that lead, specifically, where it
16 came from is mainly what they're looking for and when
17 did it -- when did they sign up is another key piece of
18 information that they're looking for.

19 Q. Okay. And then today TrustedForm includes a
20 feature called the Session Replay; right?

21 A. Yes.

22 Q. What is that?

23 A. Session Replay is effectively a copy of the
24 web page where the -- where the consumer fill out their
25 information where the TrustedForm script was installed,

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1 MS. GLIOZZO: Okay. You can take it down,
2 Jordan.

3 BY MS. GLIOZZO:

4 Q. Before when you were talking about the
5 development of TrustedForm, you said -- you described a
6 sort of problem that needed to be solved was fraud by
7 lead sellers or misrepresentations.

8 At some point, did consent compliance become a
9 focus of TrustedForm's operation as well?

10 A. Yes.

11 Q. When was that?

12 A. 2013.

13 Q. Okay. Can you tell us, generally, what
14 happened to lead to that?

15 A. The Telephone Consumer Protection Act was
16 updated in October of 2013 to require written, prior
17 expressed written consent for companies that were
18 contacting consumers on their cell phone using
19 media-regulated technology.

20 Q. And how does TrustedForm help provide proof of
21 consent?

22 A. So as a requirement of the law, you must have
23 documentation of consent.

24 And for companies that were contacting
25 consumers, they found that they needed to have some sort

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1 of proof to provide.

2 Since there is active litigators always
3 looking to go after any company that might have done
4 things the wrong way under the TCPA, and so TrustedForm
5 provide a very effective way to document consent to
6 comply with that law.

7 Q. We're going to do another document. This is
8 going to be Exhibit 34 (sic).

9 (Plaintiffs' Exhibit 35, U.S. Patent for
10 TrustedForm, was marked for identification.)

11 BY MS. GLIOZZO:

12 Q. Let me zoom in.

13 Do you recognize this document?

14 A. I do.

15 Q. What is it?

16 A. That is the patent for TrustedForm.

17 Q. This was one of the documents that you
18 reviewed when you were preparing for this deposition;
19 right?

20 A. Yes.

21 Q. Do you see it says "Date of Patent, April 7,
22 2020"?

23 A. Yes.

24 Q. And then over on the right here, let me see --
25 I'm trying to get fancy here. Do you see this where it

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1 A. That is what it says.

2 Q. Okay. And then there's some model language
3 that it says, quote, "is recommended for insertion in
4 your privacy notice," right?

5 A. Yes, that's what it says.

6 Q. And then we can see it's like bold, block text
7 that is the recommended disclosure language; right?

8 A. That is correct.

9 Q. If you need me to scroll down, just let me
10 know.

11 A. I can see the -- see the language.

12 Q. Okay. So do I understand your testimony
13 correctly, you provide this recommended language, at
14 least from April 2021 on, but you don't require that
15 your customers use this particular language; right?

16 A. That's correct.

17 Q. You don't require -- ActiveProspect doesn't
18 require that its customers use any particular language
19 to get consent from website visitors to the operation of
20 TrustedForm; right?

21 MS. FISHER: Objection. Document speaks for
22 itself. Calls for a legal conclusion.

23 A. We do not require any specific language.

24 BY MS. GLIOZZO:

25 Q. And if I scroll down, the next sentence says,

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1 "Your failure to comply with the above CCPA notice
2 obligations will be deemed a material breach of this
3 agreement." It says that; right?

4 A. That's what it says.

5 Q. So for term.prudential.com, can you describe
6 the steps that -- any steps that ActiveProspect took to
7 confirm for itself that this term of the agreement was
8 complied with, that there was adequate notice and
9 consent to the operation of TrustedForm?

10 MS. FISHER: Objection. Outside the scope of
11 the 30(b) (6) topics on which Mr. Rafferty was
12 prepared to testify.

13 A. So our script is on about 58,000 websites.
14 It's a standard in the industry. So we do not police
15 the websites for their notice policies.

16 BY MS. GLIOZZO:

17 Q. So have I understood you correctly
18 ActiveProspect took no steps to confirm whether the
19 terms of this agreement were complied with on
20 term.prudential.com?

21 MS. FISHER: Same objection.

22 BY MS. GLIOZZO:

23 Q. Strike that. Let me be more clear.
24 Do I understand you correctly that
25 ActiveProspect took no steps to confirm that its client

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1 was adequately securing consent to the operation of
2 TrustedForm on term.prudential.com as described in the
3 EULA?

4 MS. FISHER: Same objection.

5 A. So ActiveProspect does not proactively -- as a
6 policy, we do not proactively review clients' websites
7 to see if they give proper notice.

8 BY MS. GLIOZZO:

9 Q. What steps, if any, does ActiveProspect take
10 to evaluate whether one of its clients is in breach as
11 described in this part of the EULA that we're looking
12 at?

13 MS. FISHER: Same objection. It's outside the
14 scope of the 30(b) (6) topics. And I'd also object
15 to the extent it calls for disclosure of privileged
16 information.

17 A. We -- When we look at a material breach of our
18 contracts, these are things we would handle on a case by
19 case basis.

20 BY MS. GLIOZZO:

21 Q. Okay. I want to go to a few pages down in the
22 EULA. Do you see there's a section here under the
23 heading "Mutual Indemnification"?

24 A. I do.

25 Q. There's a paragraph that says "Indemnification

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1 And then the next step is when the
2 communication's sent to the -- to the -- to the site
3 owner, that is typically done via form post.

4 And so what happens is TrustedForm, the
5 information that TrustedForm has documented as when
6 they're filling out the form is then sent with the lead
7 data to the site owner.

8 Q. Okay.

9 A. Or sent as part of that communication to the
10 site owner.

11 Q. Okay. And it says here, "The script inserts a
12 special hidden field into the form" that will contain
13 the URL for the certificate. Do you see that?

14 A. That's correct.

15 Q. Can you just, generally, explain to us how
16 that works?

17 A. Sure. So, on the Internet, when you want to
18 submit a form, that form is posted to the owner of the
19 site.

20 And the form is -- has fields, and
21 TrustedForm, the certificate itself, is posted along
22 with the rest of the fields submitted by the consumer to
23 the -- to the site owner.

24 Q. Got it. And so do I understand it right that
25 the user's interaction with the page that has the

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1 TrustedForm script sort of triggers the creation of a
2 unique identifier of sorts?

3 A. Yeah.

4 Q. The URL takes them to the certificate that's
5 associated with that identifier; is that right?

6 A. Yeah. The -- Each certificate has a unique
7 identifier. We refer to it as "Certificate ID."

8 And the way I think of it is that each
9 certificate is like a lock box, and that certificate ID
10 is the key to that lock box.

11 Q. What do you mean by that?

12 A. Well, the -- all the information in -- that is
13 contained in a TrustedForm Certificate is -- belongs to
14 the site owner, and we're storing that in an encrypted
15 and very secure environment for the site owner.

16 And in order for them to find that particular
17 certificate, they need to have that certificate ID. And
18 so that ID is how we find certificates.

19 So we don't have a way -- since we don't -- we
20 don't -- we don't do anything with user submitted data.
21 We don't store it. We can't -- This way to find the
22 certificate is with a ID.

23 Q. And so in this case the term.prudential.com,
24 the webform, when a user clicks "Submit", the data that
25 gets sent to Assurance and/or Prudential, one of the

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1 fields there is a field for the TrustedForm ID number
2 and another field for the URL link to the certificate;
3 is that right?

4 A. So, I can't speak to the specifics of the
5 implementation on the Prudential or Assurance websites
6 because I'm not familiar with exactly how they do it,
7 but I can speak to how it's designed to work. And the
8 certificate URL is one field, and the URL has the ID on
9 it. So it passes one value. So we refer to that as the
10 TrustedForm Certificate URL.

11 Q. Okay. And the post we were just looking at
12 described as a "hidden field." Do I understand it's not
13 visible to the user but it's sort of in the code of the
14 website?

15 A. That's correct. It's within the code of the
16 website. So just additional field. There's
17 typically -- there's typically a number of hidden fields
18 on any website or a website form.

19 Q. I think we've just generally talked about how
20 the software functions. Are there any pieces of how the
21 software functions that we haven't discussed yet or does
22 that really cover it?

23 A. There's -- Depends on how granular you want to
24 get in how the software functions.

25 Q. Let me ask it a better way. I'm sure we could

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1 go into more detail about how it works, but as far as
2 the basic functioning of the website, have we discussed
3 each of the, you know, pieces of the basic functioning
4 or are there things that we haven't discussed yet?

5 A. I think we've -- we've covered the basics.

6 Q. So with that, the software we've just been
7 discussed -- Strike that.

8 The TrustedForm software that we've been
9 discussing and the way that it functions, that software
10 was invented by ActiveProspect; right?

11 A. TrustedForm software, yes.

12 Q. You and a few other folks whose names we
13 looked at are listed on the patent as the creators;
14 right?

15 A. We were the original team involved, but there
16 have been many, many engineers that have worked on it
17 over the years.

18 Q. Okay. So the way that the TrustedForm
19 software functions, fair to say it was designed to
20 function the way that it does; right?

21 A. I would say, yes, it functions as designed.

22 Q. Okay. It was designed to be installed on a
23 web page by a customer of ActiveProspect; right?

24 A. It's designed to be installed on a web page.
25 The company that installs it doesn't have to be a

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1 customer. I consider a customer someone that pays us,
2 but it's free to install the TrustedForm script on -- on
3 a web page.

4 Q. Okay. So let me ask it this way. It was
5 designed to be installed on a website by the owner of
6 whichever website, an owner of whichever website is
7 somebody other than ActiveProspect; right?

8 MS. FISHER: Objection. This is outside the
9 scope of the noticed 30(b) (6) topics.

10 A. But the -- the -- the TrustedForm script is
11 designed to be installed by the owner of the website,
12 and we're acting as a service provider for the website.

13 BY MS. GLIOZZO:

14 Q. And it's designed to record the events of a
15 user's mouse clips -- mouse clicks, key strokes, et
16 cetera, batch them and send them every few seconds;
17 right? It's designed to work that way?

18 MS. FISHER: Objection. Misstates the
19 witness' prior testimony. Lacks foundation and
20 assumes facts not in evidence.

21 A. It's -- It's designed to certify Internet
22 leads. That's what it's designed for.

23 Its primary use today is for companies trying
24 to document consent to comply with TCPA.

25 BY MS. GLIOZZO:

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1 Q. But the function of the software where it
2 records events, including key strokes and mouse
3 movements as they occur, it was designed to do that;
4 right?

5 MS. FISHER: Objection. Misstate the witness'
6 prior testimony and assumes facts not in evidence.

7 A. So as I stated before, it documents the events
8 that take place on a page where it's installed and
9 batches those, ends up sends them to our server, which
10 they are then collected into a TrustedForm Certificate
11 that is identified by a certificate ID that is locked
12 and stored for that site owner for their use.

13 BY MS. GLIOZZO:

14 Q. Right. And all I'm trying to get at is it's
15 not by accident that that happens, that's how it's
16 designed to work; right?

17 A. Yeah. It's designed to work as I described,
18 that's correct.

19 Q. And in this case, when TrustedForm was
20 installed on term.prudential.com, you're aware that
21 TrustedForm certificates were generated from
22 term.prudential.com; right?

23 A. Yes.

24 Q. So when TrustedForm is functioning on
25 term.prudential.com, it's functioning as intended;

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1 right?

2 MS. FISHER: Objection. It's outside the
3 scope of the noticed 30(b) (6) topics.

4 A. So your question is is it functioning as
5 intended?

6 BY MS. GLIOZZO:

7 Q. Yes.

8 A. We are -- It's up to the site owner to install
9 our script. So assuming they install it as -- as we
10 give guidance, then it should work as intended.

11 But I haven't reviewed the actual
12 implementation on the sites.

13 Q. I'm assuming that the fact that TrustedForm
14 certificates are generated is a sign that it's
15 functioning properly; is that wrong?

16 A. Well, I guess it depends on what you mean by
17 "functioning properly".

18 We have seen instances where people install
19 the script incorrectly and they don't capture what they
20 want to capture, so.

21 Q. Okay. The fact that TrustedForm certificates
22 are being generated from term.prudential.com,
23 something's being captured; right?

24 MS. FISHER: Objection. Assumes facts not in
25 evidence. Misstates the witness' prior testimony.

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1 A. So what exactly is the question? Sorry.

2 You're asking if --

3 BY MS. GLIOZZO:

4 Q. The fact that there are TrustedForm
5 certificates that were generated on term.prudential.com
6 in the relevant timeframe, that indicates that
7 information is being captured; right?

8 MS. FISHER: Same objection.

9 A. Yes. Well, as long as a certificate is being
10 generated on a page, then, generally speaking, there's
11 some information being captured.

12 BY MS. GLIOZZO:

13 Q. Right. ActiveProspect could have designed the
14 software to function differently; right? It is in
15 control of how the software was designed; right?

16 MS. FISHER: Objection. Calls for
17 speculation. It's outside the scope of the noticed
18 30(b) (6) topics.

19 A. We -- We designed it to do what it does.

20 BY MS. GLIOZZO:

21 Q. And we've covered this, but just to draw a
22 circle around it, ActiveProspect doesn't install its
23 script on other people's website, right, it has to be
24 the owner of the website that installs the script?

25 A. That's correct.

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1 Q. So in order for TrustedForm to function on a
2 website, it requires two parties to sort of collaborate;
3 right? There's the website owner who installs the
4 script and ActiveProspect who designed and provides the
5 script; is that a fair summary?

6 A. Yes. We -- The -- There's the site owner has
7 to install the script and we're the ones that provide
8 the script, that's correct.

9 Q. Right. So in this case, without Assurance or
10 Prudential, whichever one of them installed TrustedForm
11 on the webform here, it wouldn't have functioned on
12 term.prudential.com; right?

13 A. That's correct.

14 Q. And so without them installing it, no
15 information would have been captured by the TrustedForm
16 software; right?

17 A. That's correct.

18 Q. Okay. I'm going to talk about in the 2021,
19 2022 timeframe, can you describe what is typical in
20 ActiveProspect's normal functioning? How much contact
21 does ActiveProspect have with its clients or consumers,
22 folks who use the TrustedForm software on their
23 websites?

24 MS. FISHER: Objection to the extent the
25 question seeks information outside the scope of the

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6 Q. Okay. One of the other main things in Topic 6
7 is the manner in which you organize and store
8 information.

9 So please describe the general manner in which
10 ActiveProspect stored the information it collected
11 through the use of TrustedForm on term.prudential.com?

12 A. So the -- As I discussed, a certificate is
13 issued for each site visitor.

14 If that certificate is submitted with the rest
15 of the form data to the site owner and then the site
16 owner then makes that API call to us that we described
17 to claim that certificate, then at that point, we will
18 store it in their account on their behalf.

19 If that does not happen, then by default we
20 delete the data.

21 Q. When you say "in their account," I think
22 earlier you told me that's in the Amazon cloud -- I
23 can't think of the name of it, but it's in the Amazon
24 web service?

25 A. Amazon Web Services.

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1 certificate for everybody that fills out the form;
2 right?

3 MS. FISHER: Objection. Assumes facts not in
4 evidence.

5 A. If TrustedForm is functioning properly, a
6 TrustedForm Certificate will be issued for every site
7 visitor to the page where the TrustedForm script is
8 installed.

9 BY MS. GLIOZZO:

10 Q. Okay. And then you started to describe
11 reasons why it might not function properly; right?

12 A. Right.

13 Q. Okay. Let me -- I'm going to go to an exhibit
14 here that might help us talk through them all.

15 MS. GLIOZZO: This is going to be the next
16 numbered exhibit, which is 42. The next numbered
17 exhibit is number 42. And if I can get it up.

18 (Plaintiffs' Exhibit 42, Certificate Wouldn't
19 Be Created, was marked for identification.)

20 BY MS. GLIOZZO:

21 Q. Okay. Here's number 42. Do you see that?

22 A. I do.

23 Q. Then scrolling to the bottom we see as before
24 this is one of those posts on
25 community.activeprospect.com; right?

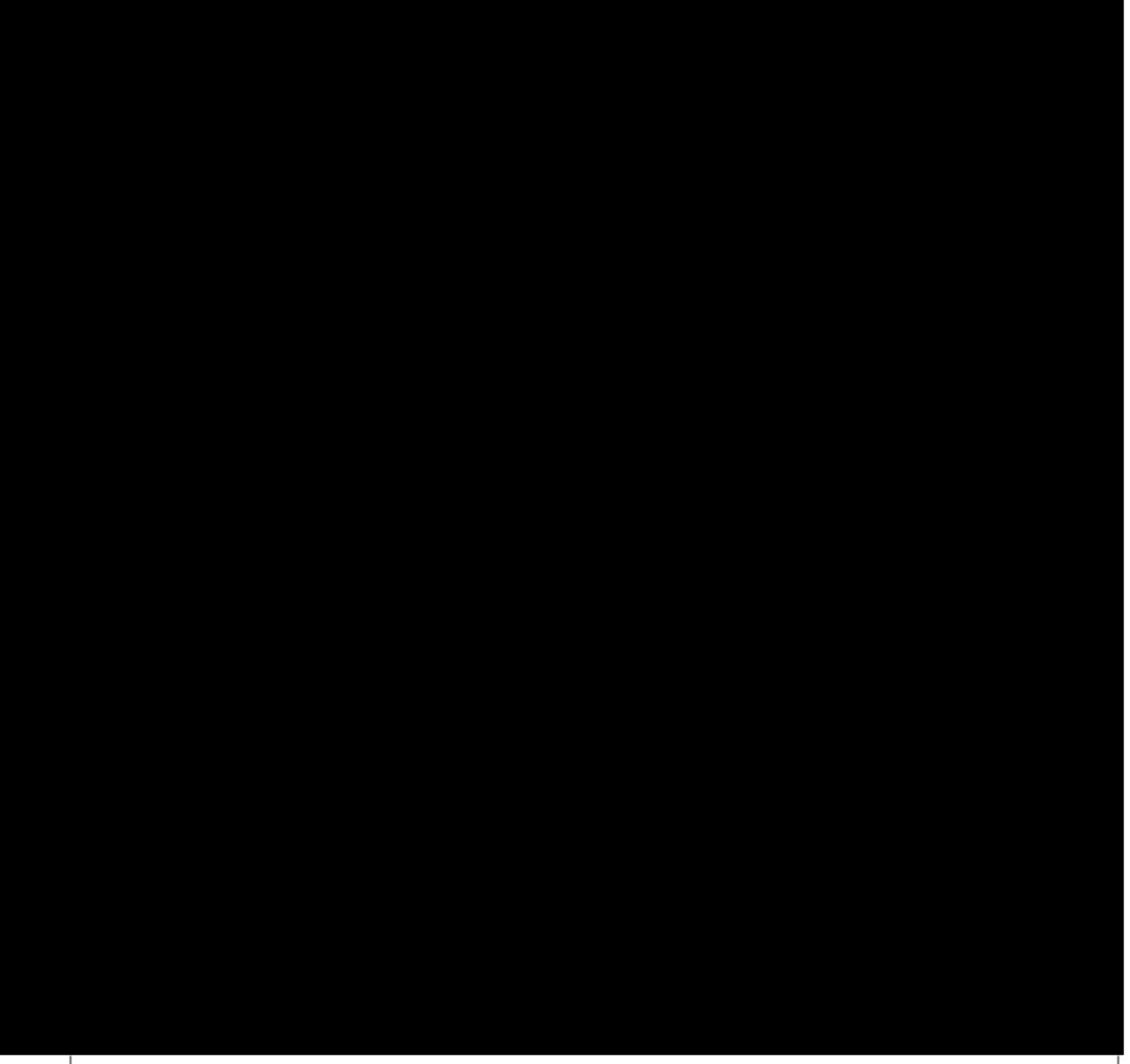
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1 A. I was going to say, I think this one's
2 probably somewhat unusual.

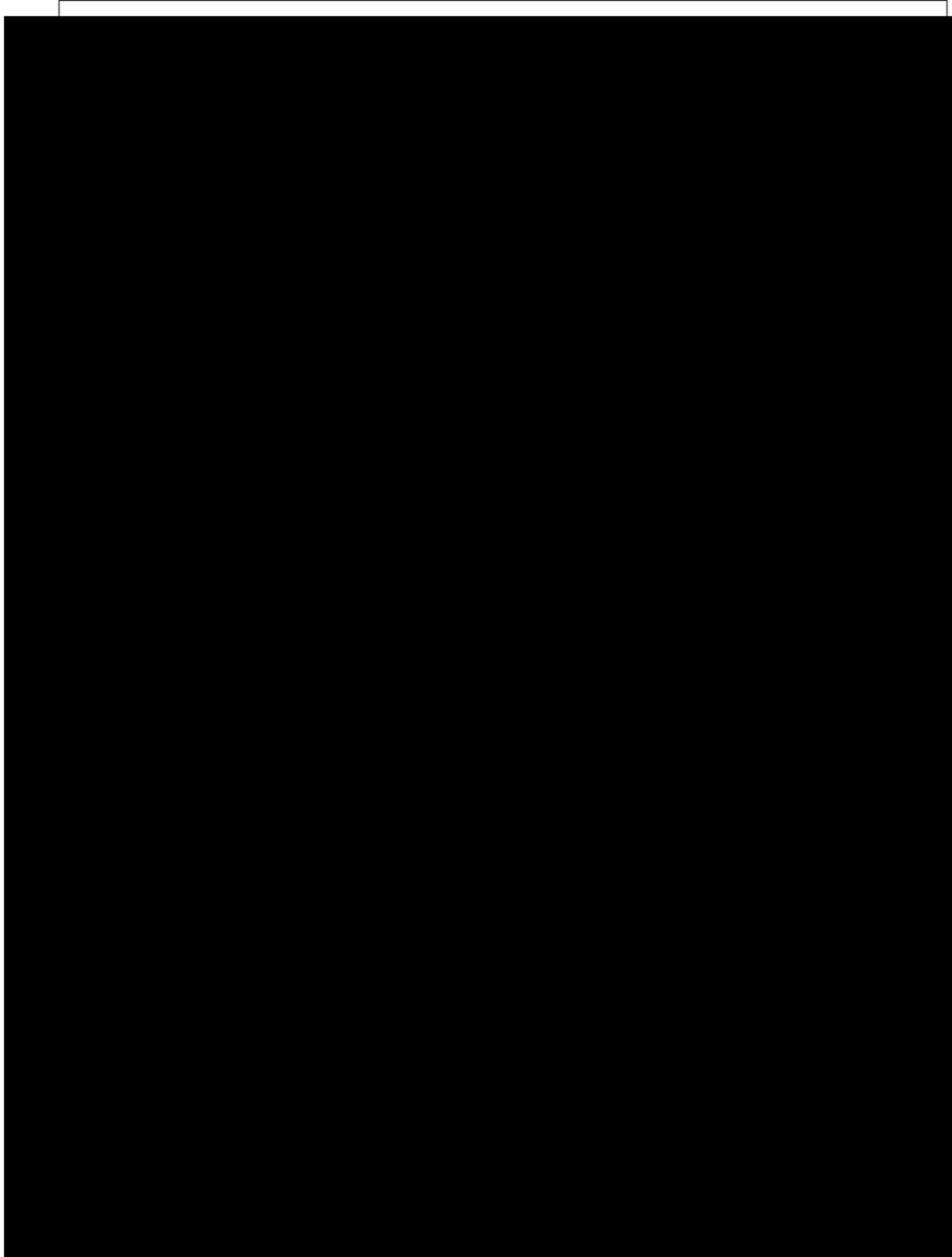
3 Q. Okay. You mentioned before part of the data
4 that's collected on a TrustedForm Certificate is
5 metadata of the user; right?

6 A. Yes. I don't know if -- but, yes, part of the
7 data that we capture is metadata.



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1 the specifics. Right?

2 A. Yeah. If you were -- What I would do, per
3 your question, I would go to that site and I'd look back
4 and just try and look at the history and see if there's
5 anything happened then, we should have record of there.

6 Q. Okay. I want to ask everything on this list
7 it says, these are "scenarios that would," quote,
8 "prevent a TrustedForm Certificate URL from being
9 created."

10 My understanding right, this is a sort of list
11 of -- it's a binary. It's either a certificate is
12 created or it's not. None of these would lead to a sort
13 of an incomplete certificate; is that right?

14 A. I think you can get an incomplete certificate
15 if the TrustedForm script is implemented incorrectly.

16 Q. Okay. So other than the script being
17 implemented incorrectly, the rest of these are binary.
18 If the certificate is created, we can assume none of
19 these things occurred; is that fair?

20 A. Yeah, I think that's generally fair.

21 I mean, with a bad Internet connection it
22 could create problems. I could see a certificate being
23 created, but typically don't get all of the information
24 because of bad, bad connectivity.

25 There could be gaps.

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1 Q. Are you aware of any material changes to the
2 TrustedForm script in the 2021, 2022 timeframe that
3 changed the way that the software operates?

4 A. Changed the way the script operates.

5 The only thing I can think of -- I don't
6 recall the date precisely -- is we would look at the --
7 we started to be able to see when someone clicked this
8 big button.

9 Q. Am I understanding that there's like a time
10 stamp for when they start and a time stamp for when they
11 click submit, those are two different data points,
12 that's the change; is that what you're describing?

13 A. We started -- We wanted to -- I can't remember
14 the date on that. Sorry.

15 But one -- one -- one change that took place
16 is looking at -- we tried to look at when someone
17 submitted actively, you know, clicked "Submit".

18 Q. Okay. So there's like a separate time stamp
19 that's recorded for the clicking submit event; am I
20 understanding that's what you're describing?

21 A. Should be.

22 Q. Okay. Does the --

23 A. Actually, materially, that's the same as a key
24 stroke, so no difference in data.

25 Q. Okay. And then does the software work the

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1 same whether the visitor to the website is a mobile or a
2 desktop user?

3 A. Yeah. We have a -- If they're -- If a user is
4 interfacing with a mobile app, we do have a separate STK
5 for mobile apps.

6 Q. Okay.

7 A. But if it's just a mobile user going to a
8 normal web page, then it works basically the same.

9 Q. Okay. So with regard to term.prudential.com
10 which is a website, not an app, the software functions
11 the same whether it's someone going to the website on
12 their phone or on their desktop computer; right?

13 A. That's correct.

14 Q. Okay. And I just want to confirm that I
15 understand this correctly, the information that
16 TrustedForm collects, we just looked at the list --

17 A. Yep.

18 Q. -- does that vary based on what a user's
19 cookie settings are?

20 A. We don't cookie users, so it should not vary.
21 We don't cookie users. We don't engage in cross-site
22 tracking. We generally do whatever we can to protect
23 consumer privacy.

24 Q. And does the information collected by
25 TrustedForm, does that vary based on which web browser

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1 the user is using?

2 A. It should not.

3 Q. Does it vary based on whether the user has a
4 firewall installed?

5 A. I don't know. I wouldn't be able to speak to
6 that.

7 Q. Okay. I think that's all I've got for number
8 9.

9 MS. GLIOZZO: So we can break for lunch now.

10 THE WITNESS: Sounds good.

11 MS. FISHER: Great.

12 THE VIDEOGRAPHER: Okay. The time is
13 1:24 p.m. Central and we are off the record.

14 (A lunch break was taken at 1:24 p.m. and the
15 following commenced at 2:06 p.m. CT.)

16 THE VIDEOGRAPHER: The time is 2:06 p.m.
17 Central and we're back on the record.

18 BY MS. GLIOZZO:

19 Q. Mr. Rafferty, before we start up, I wanted to
20 ask, is there any of your previous testimony that after
21 the break you would like to amend or correct?

22 A. I don't think so.

23 Q. Great. Okay. Let's go to Topic 10. So on
24 the Notice you will see Topic 10 is your use of
25 information obtained through TrustedForm.com; do you see

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1 Q. Okay. What, if any, are the categories of use
2 that ActiveProspect uses data from TrustedForm on
3 prudential.com?

4 A. So any data that's collected by TrustedForm on
5 the websites is owned by those websites.

6 Q. So how, if at all, does ActiveProspect use
7 that data?

8 A. So the data we collect is captured in a
9 TrustedForm certificate, which we store for the site
10 owner, and then that site owner can, at their
11 discretion, pass that certificate to another party if
12 they so choose.

13 Like I mentioned before, we think of a
14 certificate like a lock box with a -- the key being that
15 certificate ID. And so if they pass that certificate on
16 to another party, and give them the key, then we can let
17 that other party access that certificate as well.

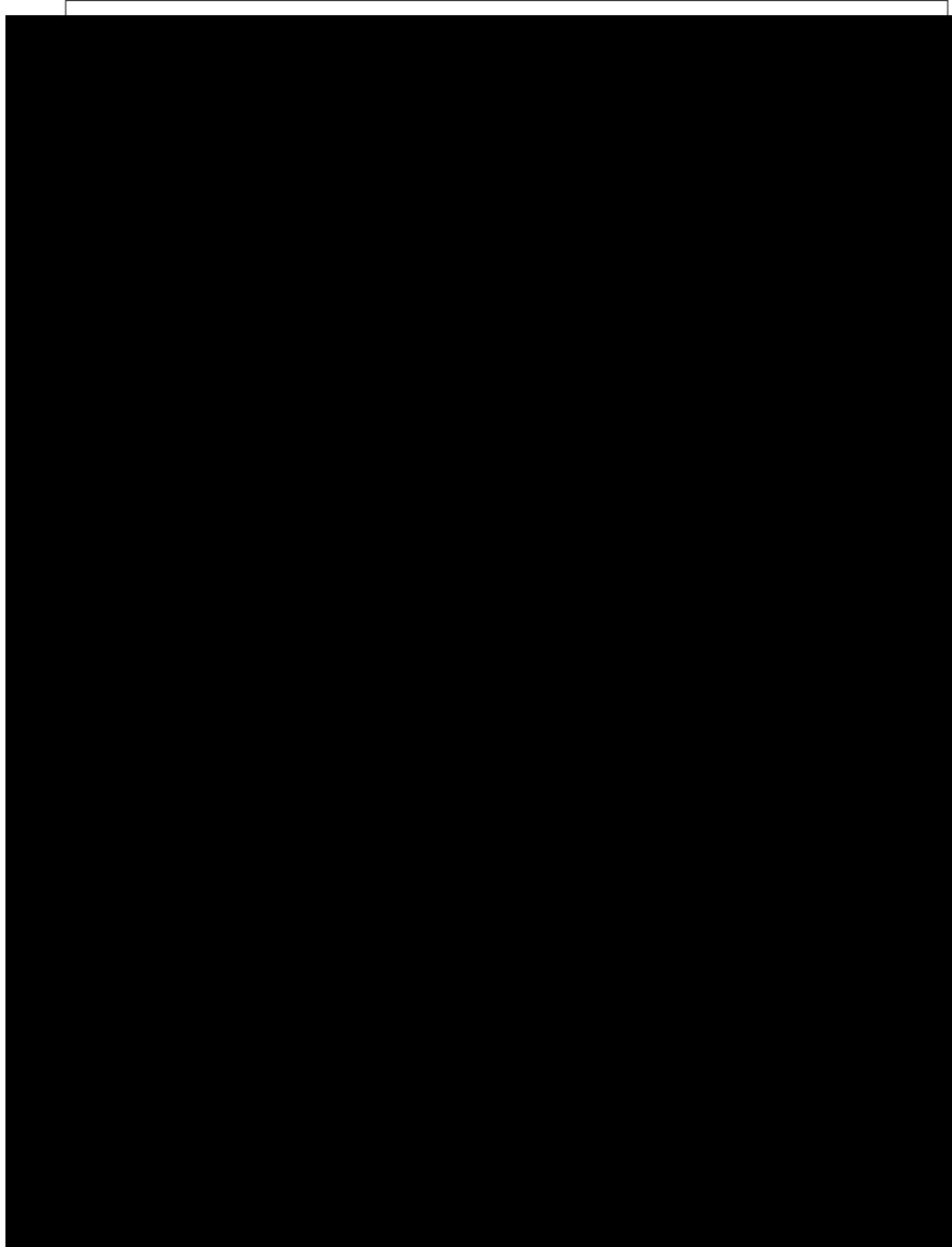
18 Q. So is it fair to say, then, that
19 ActiveProspect uses the data captured in the TrustedForm
20 certificates to provide services to its clients?

21 MS. FISHER: Objection. Misstates the
22 witness' prior testimony.

23 A. The question is did we use -- yeah, I mean,
24 the information collected by the certificate is for the
25 use of the services. We don't use the data for other

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1 idea. Like, this article's a little old.

2 BY MS. GLIOZZO:

3 Q. Okay. And then I think there's one more that
4 I want to show you.5 For purposes of the TCPA compliance goal of
6 the TrustedForm software, your marketing says it's
7 important that that documentation comes from a
8 third-party as opposed to the owner of the website;
9 right? That's generally true?10 A. We believe the documentation should be
11 independent, sort of like you have an auditor, an
12 independent auditor audit your financials. I think it's
13 just better practice for people to know that what's
14 there is good, to have an independent party do it.15 MS. GLIOZZO: So I'm going to pull up what's
16 been marked as Exhibit 50.17 (Plaintiffs' Exhibit 50, Pass the Data Without
18 Using TrustForm, was marked for identification.)

19 BY MS. GLIOZZO:

20 Q. Do you see this is another post from
21 community.activeprospect.com; right?

22 A. Okay.

23 Q. And this says, "Why can't I just pass the data
24 without using TrustedForm," right?

25 A. That's right.